IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5530 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHALAJI LAKHANI @ LAXMANSINH THAKOR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SJ DAVE, AGP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 19-5-2000 passed by the Police Commissioner, Ahmedabad City and he has been

declared as bootlegger.

2. It is a settled principles of law that in order to bring a person within the expression " dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-social Activities Act, 1985, (for short " the Act of 1985 "), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression " public order". A distinction has to be drawn between the " law and order " and " maintenance of public order ". A reference may be made of M.J.Shaikh v. M.M.Mehta, Comissioner of Police & Ors. reported in 1995 (2) GLR 1268.

3. According to learned advocate for the petitioner, the detenu has submitted a representation to the State authority on 31-5-2000 which has been received by the authority on 1-6-2000. By of way of said representation dated 31-5-2000 the petitioner damanded certain documents, but the above request of the petitioner has been turned down on 2-6-2000 and till date the said documents have not been supplied, and, therefore, it is a point which is required to be taken into consideration. Learned APP, S.J. Dave has fairly admitted the same.

4. It has been held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under :

> "Detention- Documents relied on by authorities not supplied with grounds of detention- Detention is illegal. "

It has been further held by the Apex Court as under :

> "It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

5. It is the duty of the authority to supply copies of the statements and documents with the detention order. Here in this case, copies of the documents, though relied upon by the authority in passing the impugned order of detention, have not been supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point, learned advocate for the petitioner does not press any other points.

6. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 19-5-2000 passed against the detenu is hereby quashed. The petitioner-detenu Bhalaji Lakhaji @ Laxmansinh Thakor is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.Dholakia, J.)

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